tenant cannot be charged with negligence by reason of a defect in the building. In the principal case, however, the tenant did have notice of the defect, and must have known that placing heavy slabs of slate on the upper floors would possibly overload the building. Under such circumstances, he might well have been considered negligent in failing to make such repairs himself. Even though the landlord may be liable for the unsafe condition of the building, the tenant should not thereby be absolved from his responsibility to third persons, for a neglect to make such repairs as are incumbent on him. TAYLOR, LANDLORD & TENANT, Ed. 9, § 193; *Ryan* v. *Fowler*, 24 N. Y. 410; *Whalen* v. *Gloucester*, 6 Thomp. & C. 135; *Davenport* v. *Ruckman*, 37 N. Y. 568. Undoubtedly, whether the tenant was negligent and liable or not, the landlord could be shown guilty of negligence. Usually the landlord's liabilities are suspended as soon as the tenant commences his occupation. *Brown* v. *White*, 202 Pa. 297; *Rider* v. *Clark*, 132 Cal. 382. But if the injuries are the result of faulty construction or repair of the premises, the landlord is still liable, notwithstanding the lease. *Samuelson* v. *Cleveland Iron Mining Co.*, 49 Mich. 164. So the plaintiff in the principal case rightfully instituted suits against both landlord and tenant. While judgment might be recovered in each suit, the plaintiff could claim only one satisfaction. *Seither* v. *Traction Co.*, 125 Pa. 397, 17 Atl. 338, 4 L. R. A. 54, 11 Am. St. Rep. 905.

MASTER AND SERVANT—ACTS CONSTITUTING.—The two defendants, a railway company and a brewing company, agreed that for a fixed rental the railway company would rent a locomotive to the brewing company for the exclusive use of the latter in its yard, the ties and rails in said yard being owned by the railway company. The engineer and fireman were selected by the railway company, but paid by the brewing company. There was a failure to ring the bell as was the custom, and the plaintiff, an employee of the brewing company, was injured. *Held*, that the railway and brewing companies were engaged in a joint enterprise and were jointly liable. *Shoen* v. *Chicago, St. P., M. & O. Ry. Co. et al.* (1910), — Minn. —, 127 N. W. 433.

Not a single case is cited, in the opinion, in support of the above decision. *Donovan* v. *Laing* [1893], 1 Q. B. 629, holds that defendants are not liable for the negligence of their employee, in charge of a crane, loaned to a third party. *Rourke* v. *Colliery Co.*, 2 C. P. D. 205; *Powell* v. *Construction Co.*, 88 Tenn. 692; and *Miller* v. *Minn. etc. R. R. Co.*, 76 Iowa 655, support the same view as the English case. *New Orleans etc. R. R. Co.* v. *Norwood*, 62 Miss. 565 and *Coggin* v. *Cent. R. R.*, 62 Ga. 685, taking a contrary view, both cite the so-called Carriage Cases (cases involving the status of a driver sent out by a liveryman with a carriage.) The carriage cases were carefully distinguished from a case like the principal one in the *Donovan* case and in *Little* v *Hackett*, 116 U. S. 366. But passing the Construction Cases and coming to those more nearly on all fours with the principal case we come to *Byrne* v. *Kansas City, Ft. S. & M. R. Co., et al.*, 61 Fed. 605, in which TAFT, J., holds that a railroad company is not responsible for negligence in the operation of an engine, when, at the time of the accident, the engine and

the crew were rented to and under the control of another company. In this case the crew was not only selected, but paid by the railway company. *Sexton* v. *N. Y. C. & H. R. R. Co.*, 114 App. Div. 678 and *McInerney* v. *Canal Co.*, 151 N. Y. 411 on practically the same facts as the principal case were decided differently. In 37 L. R. A. 33 is an instructive note on the test of the relation of master and servant. It would seem that to decide these cases on any such broad ground as that of the principal case, viz., of a joint enterprise, is not in accord with the weight of authority. He being master, who has the control, the decision of the principal case might be followed by some courts on the narrower ground that the railway company had control of the giving of the signals. But in answer to this latter point, it is submitted that the brewing company had the power of control, for had the ringing of the bell, in its yard, for any reason, been obnoxious to it, it would have had the power to stop it.

MERGER—COVENANTS OF GRANTEE IN DEED POLL MERGE IN A BOND.—A father deeded lands to his sons, charging it in favor of each of his daughters, with the provision that if any daughter should die without issue, the installments not then due should be discharged. The sons did not sign the deed. Desiring to free the land from the charge they gave each sister a bond for the amount due and to become due under the deed, and the sisters released their lien. One sister died before all the installments of the charge had become due, and before the bond had been paid. Her administrator sued on the bond and the defendants claimed that there was a failure of consideration as to so much of the bond as represented the installments not due at the time of her death. *Held*, that as the deed was not signed by the sons their obligation to pay the charge was a simple contract, and was merged in the bond upon which they are liable. *Barnes* v. *Crockett's Adm'r.* (1910), — Va. —, 68 S. E. 983.

This case presents the application of an old and disputed rule to a new and peculiar set of facts. Had the court in the principal case adopted the view that a grantee who has not signed the deed is nevertheless liable as upon a covenant there would have been no merger, and the defense offered would have been proper. There is no question but that the grantees are liable upon conveyances which they have not signed, but under which they have entered. *Maule* v. *Weaver*, 7 Pa. St. 329; but the courts are divided upon whether the grantee is liable in covenant or in assumpsit. The better authority, however, is that they are liable in simple contract. *Locke* v. *Homer*, 131 Mass. 93; 41 Am. Rep. 199; *Willard* v. *Wood*, 135 U. S. 309; *Johnsons* v. *Muzzy*, 45 Vt. 419, 12 Am. Rep. 214; *Maule* v. *Weaver*, 7 Pa. St. 329; PLATT, Cov. 18. Contra: *Finley* v. *Simpson*, 22 N. J. L. 311, 53 Am. Dec. 252; *Earle* v. *Mayor*, 38 N. J. L. 47; *Ga. So. Ry. Co.* v. *Reeves*, 64 Ga. 492; *Bowen* v. *Beck*, 94 N. Y. 86, 46 Am. Rep. 124. This question becomes important often times in determining when the statute of limitations has run. In *Midland Ry. Co.* v. *Fisher*, 125 Ind. 19, 21 Am. St. Rep. 189, 8 L. R. A. 604; *Hickey* v. *Railway Co.*, 51 Ohio St. 40, 36 N. E. 672, 23 L. R. A. 396; *Sexauer* v. *Wilson*, 136 Iowa 357, 14 L. R. A. (N. S.) 185, and *Poage* v. *Rail-*